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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 104

THE CUDAHY PACKING COMPANY, A MAINE CORPORATION,

Petitioner,

VS.

RECONSTRUCTION FINANCE CORPORATION,

Respondent

PETITION FOR CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS AND BRIEF AND ARGUMENT IN SUPPORT THEREOF.

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INDEX

	Page
Statement of Matter Involved	1-3
Jurisdiction	4
Questions Presented	4
Reasons Relied on for Allowance of Writ	5
Conclusion	5
Brief	7
Summary of Argument	8
Argument	8-11

Table of Authorities

Cases:

Wm. Schluderberg–T. J. Kurdle Co. v. *Reconstruction Finance Corporation,* 169 F. 2d 419	3, 4, 5, 8, 10, 11
Gibbs v. *Reconstruction Finance Corporation,* 169 F. 2d 654	8, 9, 11
Belle City Packing Company v. *Reconstruction Finance Corporation,* 169 F. 2d 413	9
Royal Packing Co. v. *Reconstruction Finance Corporation,* 169 F. 2d 999	9
Consolidated Flour Mills Co. v. *Reconstruction Finance Corporation,* 177 F. 2d 206	9
Armour & Co. v. *Bowles,* 148 F. 2d 529	11
Rubin et al. v. *Bowles,* 150 F. 2d 860	11

Statutes:

Emergency Price Control Act of 1942, as amended	2
Reconstruction Finance Corporation Act	2

Regulations:

Livestock Slaughter Payments Regulation No. 3 Revised	2, 3, 5, 8
Livestock Slaughter Payments Regulation No. 10	2, 3
Regulation No. 11 of Reconstruction Finance Corporation	3

Miscellaneous:

	Page
Announcement No. 1 under Regulation No. 10 of Reconstruction Finance Corporation	2, 3
Letter from Reconstruction Finance Corporation dated April 29, 1947	2

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To the Honorable the Justices of the Supreme Court of the United States:

Now comes The Cudahy Packing Company and respectfully petitions that this Court grant the Writ of Certiorari for review of the decision of the United States Emergency Court of Appeals in the above entitled cause and in support of its petition respectfully shows unto your Honors as follows:

Statement of Matter Involved

Petitioner is engaged in the business of the purchase and slaughter of livestock and the processing and sale thereof as meat and meat products (R. 2).

Livestock slaughter payment subsidies to domestic producers were made effective in June, 1943, by Regulation No. 3 issued under authority of the Director of Economic Stabilization pursuant to Section 2(e) of the Emergency Price Control Act of 1942, 50 U.S.C.A. Appendix, Section 902(e) The said Act provided that payments should be made by corporations created pursuant to Section 5d of the Reconstruction Finance Corporation Act. The Defense Supplies Corporation was created and was empowered to act as paying and disbursing agent of subsidies payable to slaughterers of livestock pursuant to Regulation No. 3. Livestock slaughter payment subsidies lapsed beginning June 30, 1946, but were again restored on September 1, 1946, in accordance with Regulation No. 10 of Respondent, which regulation incorporated therein Revised Regulation No. 3, as amended. The subsidy program terminated October 14, 1946 (R. 117).

Petitioner filed its subsidy claims with Respondent for livestock slaughter payment subsidies covering the period from September 1, 1946, to October 14, 1946, both inclusive, pursuant to and in conformity with Regulation No. 10, such claims being in the aggregate amount of $521,927.83. Payments have been made by Respondent in the aggregate amount of $482,563.92, leaving unpaid claims in an aggregate amount of $39,363.91 (R. 11).

On March 31, 1947, Respondent issued its "Announcement No. 1 under Regulation No. 10 of Reconstruction Finance Corporation" to the effect that subsidies allocable to meat inventories on hand at the close of business October 14, 1946, with respect to slaughterers who slaughtered in excess of 500,000 pounds of livestock during the May-June-September, 1946, period should be recaptured (R. 3). Subsequent thereto petitioner received a letter dated April 29, 1947, from Respondent, attaching thereto copies of form

(DSC-118) for reporting said inventories and stating that meat subsidy applicants must file the form with Respondent or forfeit their total meat subsidy claims for September and October of 1946. Petitioner filed said form with Respondent under protest without payment (R. 7).

Respondent on September 14, 1950, issued its Regulation No. 11, providing in part that the refusal or failure of Respondent by the date of issuance of said regulation to make payment of or to give appropriate credit for claimed food subsidies should be deemed an order denying such payment or credit (R. 8). Petitioner thereupon filed its protest with Respondent pursuant to said Regulation No. 11, particularly contesting the validity of Announcement No. 1 of Respondent and the requirements and course of action with respect to such inventory recapture (R. 8). Such protest was denied on January 2, 1951 (R. 12).

Thereupon Petitioner filed its complaint to such denial in the United States Emergency Court of Appeals on January 29, 1951 (R. 1). Respondent on February 12, 1951, filed its motion to dismiss the complaint upon the ground that the only issue presented by the complaint is that of the validity of Respondent's Announcement No. 1 under its Regulation No. 10 and that this issue had already been decided by the United States Emergency Court of Appeals in Respondent's favor in the substantially identical case of *Wm. Schluderberg-T. J. Kurdle Co.* v. *Reconstruction Finance Corporation,* 169 F. 2d 419 (1948) certiorari denied, 335 U.S. 846 (1948) (R. 13).

On May 8, 1951, the United States Emergency Court of Appeals entered its judgment stating that upon consideration of the complaint, Respondent's motion to dismiss the complaint and brief in support thereof, and of Petitioner's brief and argument in opposition thereto, and upon the authority of the decision of the court in *Wm. Schluderberg-*

T. J. Kurdle Co. v. *Reconstruction Finance Corporation,* 169 F. 2d 419, certiorari denied, 355 U.S. 846, it was ordered, adjudged and decreed that the complaint be dismissed (R. 120).

Basis of Jurisdiction

The judgment of the United States Emergency Court of Appeals was entered May 8, 1951. The jurisdiction of this Court is invoked under Section 204(d) of the Emergency Price Control Act of 1942, as amended.

Questions Presented

The questions presented are:

First, Respondent assumed authority which was not expressly granted to it to declare invalid claims for livestock slaughter subsidies which were filed and supported by facts in accordance with the provisions of Revised Regulation No. 3, as amended. In so doing, did not Respondent exceed its jurisdictional authority in declaring invalid claims which were valid by the express terms of said regulation.

Second, the Emergency Court of Appeals decided this case on the authority of the case of *Wm. Schluderberg-T. J. Kurdle Co.* v. *Reconstruction Finance Corporation.* Complainant in that case conceded rather than contested the issue whether livestock slaughter payment subsidies were consumer subsidies rather than production subsidies payable at the slaughter level. Was not, therefore, the *Schluderberg* case presented to the Emergency Court of Appeals on the wrong premise, and should not this case be determined by a full and complete presentation of that issue as a contested issue?

Reasons Relied On for Allowance of the Writ

The question as to the inherent authority and jurisdiction of Reconstruction Finance Corporation to declare invalid, claims which were filed in conformity with Regulation No. 3, as amended, is a question which should be determined by this Court because of its general importance with respect to the construction of regulations issued by governmental agencies.

The question as to whether or not livestock-slaughter payment subsidies are producer subsidies or consumer subsidies, which was presented to the United States Emergency Court of Appeals in the *Wm. Schluderberg-T. J. Kurdle Co.* v. *Reconstruction Finance Corporation* case, supra, was presumably a material issue in influencing the decision of the court in that case. The issue was conceded by complainant and was not, therefore, considered by the court as a contested issue. Such issue involving the nature of such subsidies, because of the importance thereof and because subsidy payments of a major portion of the meat packing industry hang in the balance, should be decided only after being fully presented and considered as a contested issue.

Conclusion

Wherefore, it is respectfully submitted that the Writ of Certiorari should be issued in this cause.

VINCENT O'BRIEN,
Counsel for Petitioner.

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BRIEF AND ARGUMENT IN SUPPORT OF PETITION FOR CERTIORARI

May it Please the Court:

On May 8, 1951, the United States Emergency Court of Appeals rendered its judgment dismissing the complaint of Petitioner. A copy of such judgment is set forth at page 120 of the record.

Grounds on Which Jurisdiction of This Court Invoked

Both the basis of jurisdiction and the questions presented and the reasons relied upon for allowance of the writ are set forth in the accompanying Petition for Certiorari and are accordingly not repeated here.

Statement of the Case

The statement contained in the accompanying Petition for Certiorari contains all that is material to the consideration of the questions presented.

Summary of Argument

(1) The extent of the jurisdiction of Respondent's inherent implied authority to invalidate properly filed and proved claims should be settled.

(2) This case should not be controlled by the *Schluderberg* case in which the issue as to whether the livestock slaughter subsidy payments were production subsidies or consumer subsidies was not considered as a contested issue, such payments being conceded by complainant to be consumer subsidies.

Argument

(1) The case of *Wm. Schluderberg-T. J. Kurdle Co.* v. *Reconstruction Finance Corporation,* 169 F. 2d 419, was decided July 29, 1948, by the court below. The court held that the payments of subsidies were subject to the inherent condition subsequent that the meat derived from slaughter upon which subsidy payments were based must be disposed of prior to the removal of price controls, and sustained respondent's contention that it had jurisdiction or implied authority to make such determination, although no such condition was expressly set forth in the Revised Regulation No. 3, under which its authority was defined.

Subsequent to such decision, the court has decided similar issues involving this inherent or implied authority which respondent claims and has in each case rejected the contention of respondent that it possessed any authority outside of the express authority conferred upon it by the law and regulations. *Gibbs* v. *Reconstruction Finance Corpora-*

tion, 169 F. 2d 654 (August 19, 1948); *Belle City Packing Company v. Reconstruction Finance Corporation,* 169 F. 2d 413, 416 (August 2, 1948); *Royal Packing Co.* v. *Reconstruction Finance Corporation,* 169 F. 2d 999 (September 14, 1948); *Consolidated Flour Mills Co.* v. *Reconstruction Finance Corporation,* 177 F. 2d 206 (October 19, 1949).

The court stated in the case *Gibbs* v. *Reconstruction Finance Corporation* as follows:

> "* * * Indeed, to hold that the subsidy paying agents, Defense Supplies Corporation and its successor Reconstruction Finance Corporation, had inherent authority to invalidate the subsidy claim of such a claimant would render Section 7003.10(a) of the regulation wholly superfluous and meaningless. We conclude that the respondent had no such independent inherent power as it now claims but that its power to invalidate subsidy claims otherwise within the scope of Revised Regulation No. 3 is limited to the cases expressly provided for by the regulation.
>
> "This, of course, is not to say that the respondent did not have the authority to reduce a claim for mathematical error. As paying agent it was its duty and responsibility to determine whether a claim for subsidy presented to it came within the provisions of Regulation No. 3 in whole or in part. Indeed Sec. 7003.9(e) of Revised Regulation No. 3, as added by Amendment No. 3, expressly provided that the paying agent should have 'the right to declare invalid, in whole or in part, any claim which does not meet the requirements of this regulation.' The respondent was, therefore, empowered to determine whether the claimant had brought himself within the class to which the regulation authorized the payment of the subsidy and whether his claim had been correctly computed under the regulation. * * *"

Petitioner contends that such an important construction of Federal law and regulations should be settled.

(2) Petitioner contends that this case should not be decided upon the authority of the *Wm. Schluderberg-T. J. Kurdle Co.* v. *Reconstruction Finance Corporation* case as the nature of the subsidy being a consumer rather than a producer subsidy was conceded by complainant in its brief and considered by the court as a conceded rather than as a contested issue.

The court said in that case:

> "* * * As we have pointed out, the subsidy regulation was one of the mechanisms of the price control program and, as contemplated by Congress, the subsidies were in the nature of compensatory payments so as to validate a lower level of legal maximum prices than otherwise would have been permissible under the standards laid down in the Price Control Act for the guidance of the Price Administrator. Illinois Packing Co. *v.* Snyder, Em. App. 1945, 151 F. 2d 337, 339. Complainant indeed recognizes in its brief: 'These [subsidy] payments, while in the form of slaughter payments, were not compensation for the slaughter conducted under price control but for the meat sold under price control. There was no loss occasioned by the slaughter itself for which compensation might legally be provided under Section 2(e) of the Act. The use of the slaughter basis for payments was mere form and was employed for convenience. The compensation was required because of the low level of the maximum selling prices for meat and the compensation was for the meat sold under price control.' Consistently with the presupposition of the subsidy regulation that the meat derived from livestock slaughtered during a given accounting period would be sold by the slaughterer at regulated maximum prices, the subsidy regulation provided that no subsidy would be paid on account of the liveweight equivalent of meat condemned by federal inspectors at the time of slaughter as unsatisfactory for human consumption. Likewise, payment of the subsidy was conditioned upon compliance by the slaughterer with the maximum prices applicable to his meat products."

The nature of the livestock slaughter subsidy has been determined by the same court both before and after the decision in the *Schluderberg-T. J. Kurdle Co.* v. *Reconstruction Finance Corporation* case. *Armour & Co.* v. *Bowles,* 148 F. 2d 529 (March 29, 1945); *Rubin et al.* v. *Bowles,* 150 F. 2d 860 (August 9, 1945); *Earl C. Gibbs, Inc.,* v. *Defense Supplies Corporation et al.,* 155 F. 2d 525 (May 8, 1946); *Armour & Co.* v. *Reconstruction Finance Corporation,* 162 F. 2d 918 (July 31, 1947); *Earl C. Gibbs, Inc.* v. *Reconstruction Finance Corporation,* 169 F. 2d 654 (August 19, 1948).

The last cited case of *Earl C. Gibbs, Inc.,* v. *Reconstruction Finance Corporation* was decided subsequent to the *Wm. Schluderberg-T. J. Kurdle Co.* v. *Reconstruction Finance Corporation* case. In this case the court stated:

> "As this Court has heretofore had occasion to point out, the livestock slaughter subsidy was basically a production subsidy and, as such, had as its statutory authority Section 2(e) of the Emergency Price Control Act, 50 U.S.C.A. Appendix, § 902(e)."

It would appear that the court in the *Schluderberg-T. J. Kurdle* case, departed from its uniform line of decisions.

Conclusion

Petitioner respectfully submits that Certiorari should be granted to the end that this honorable Court may settle the questions involved.

Respectfully submitted,

VINCENT O'BRIEN,
Attorney for Petitioner.